



## **CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

**45 CFR Parts 1230 and 2554**

**RIN 3045-AA82**

### **Annual Civil Monetary Penalties Inflation Adjustment**

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Final rule.

**SUMMARY:** The Corporation for National and Community Service (operating as AmeriCorps) is updating its regulations to reflect required annual inflation-related increases to the civil monetary penalties under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Act) and Office of Management and Budget (OMB) guidance.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Kiara Rhodes, Office of General Counsel, at [PublicComments@cns.gov](mailto:PublicComments@cns.gov) or at 202-937-6965.

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

AmeriCorps, the operating name for Corporation for National and Community Service, is a Federal agency that engages millions of Americans in service. AmeriCorps members and AmeriCorps Seniors volunteers serve directly with nonprofit organizations to tackle our Nation's most pressing challenges. For more information, visit [americorps.gov](https://americorps.gov).

AmeriCorps has two civil monetary penalties in its regulations. A civil monetary penalty under the Act is a penalty, fine, or other sanction that: (1) is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; and (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. (*See* 28 U.S.C. 2461 note). A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74) (the “Act”) requires agencies to adjust their civil monetary penalties for inflation annually. This rule updates AmeriCorps’ two civil penalties for inflation.

## **II. Method of Calculation**

The inflation adjustment for each applicable civil monetary penalty is determined using the percent increase in the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October of the year in which the amount of each civil money penalty was most recently established or modified. *See* December 15, 2021, OMB Memo for the Heads of Executive Departments and Agencies, M-22-07, *Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*. The cost-of-living adjustment multiplier for 2022, based on the CPI-U for the month of October 2021, not seasonally adjusted, is 1.06222.

The agency identified two civil penalties in its regulations: (1) the penalty associated with Restrictions on Lobbying (45 CFR 1230.400) and (2) the penalty associated with the Program Fraud Civil Remedies Act (45 CFR 2554.1):

- The civil monetary penalties related to Restrictions on Lobbying (45 CFR 1230.400) range from \$20,732 to \$207,313. Using the 2022 multiplier, the new range of possible civil monetary penalties is from \$22,022 to \$220,212.
- The Program Fraud Civil Remedies Act of 1986 (45 CFR 2554.1) civil monetary penalty has an upper limit of \$11,803. Using the 2022 multiplier, the new upper limit of the civil monetary penalty is \$12,537.

### **III. Summary of Final Rule**

This final rule adjusts the civil monetary penalty amounts related to Restrictions on Lobbying (45 CFR 1230.400) and the Program Fraud Civil Remedies Act of 1986 (45 CFR 2554.1). The range of civil monetary penalties related to Restrictions on Lobbying increase from “\$20,732 to \$207,313” to “\$22,022 to \$220,212.” The civil monetary penalties for the Program Fraud Civil Remedies Act of 1986 increase from “up to \$11,803” to “up to \$12,537.”

### **IV. Regulatory Procedures**

#### *A. Determination of Good Cause for Publication without Notice and Comment and With an Immediate Effective Date*

Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553) provides that, when an agency for good cause finds that notice and public comment procedures are impracticable, unnecessary, or contrary to the public interest, then the agency may issue a rule without providing notice and an opportunity for prior public comment. The agency finds that there is good cause to except this rule from the public notice and comment provisions of the APA in this case. Because the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires the agency to update its regulations based on a prescribed formula, the agency has no discretion in the nature or amount of the change to the civil monetary penalties to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to provide

an opportunity for public comment on this rule prior to promulgation. Thus, providing for notice and public comment is impracticable and unnecessary. Additionally, it would not be possible to meet the deadlines imposed by the Act if we were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule. Therefore, notice and comment for these proscribed updates is impracticable and unnecessary.

Furthermore, the agency finds under section 553(d)(3) of the APA that good cause exists to make this final rule effective immediately upon publication in the Federal Register. In the Act, Congress expressly required Federal agencies to publish annual inflation adjustments to civil penalties in the Federal Register by January 15 of each year, notwithstanding section 553 of the APA. Under the statutory framework and OMB guidance, the new penalty levels take effect immediately upon the effective date of the adjustment. The statutory deadline does not allow time to delay this rule's effective date beyond publication. Moreover, an effective date after January 15 would delay application of the new penalty levels, contrary to Congress's intent.

Accordingly, we are issuing the annual adjustments as a final rule without prior notice or an opportunity for comment and with an effective date immediately upon publication in the Federal Register.

#### *B. Review Under Procedural Statutes and Executive Orders*

The agency has determined that making technical changes to the amount of civil monetary penalties in its regulations does not trigger any requirements under procedural statutes and Executive orders that govern rulemaking procedures.

#### **List of Subjects**

45 CFR Part 1230

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

Claims, Fraud, Organization and functions (Government agencies), Penalties.

For the reasons discussed in the preamble, under the authority of 42 U.S.C. 12651c(c), the Corporation for National and Community Service amends chapters XII and XXV, title 45 of the Code of Federal Regulations as follows:

**PART 1230 – NEW RESTRICTIONS ON LOBBYING**

1. The authority citation for part 1230 continues to read as follows:

Authority: Section 319, Pub. L. 101-121 (31 U.S.C. 1352); Pub. L. 93-113; 42 U.S.C. 4951, *et seq.*; 42 U.S.C. 5060.

**§ 1230.400 [Amended]**

2. Amend § 1230.400 by:
  - a. In paragraphs (a), (b), and (e), removing “\$20,732” and adding, in its place, “\$22,022” each place it appears.
  - b. In paragraphs (a), (b), and (e), removing “\$207,313” and adding, in its place, “\$220,212” each place it appears.

**Appendix A to Part 1230 [Amended]**

3. Amend appendix A to part 1230 by:
  - a. Removing “\$20,732” and adding, in its place, “\$22,022” each place it appears.
  - b. Removing “\$207,313” and adding, in its place, “\$220,212” each place it appears.

**PART 2554 – PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS**

4. The authority citation for part 2554 continues to read as follows:

Authority: Pub. L. 99-509, Secs. 6101-6104, 100 Stat. 1874 (31 U.S.C. 3801-3812); 42 U.S.C. 12651c-12651d.

**§ 2554.1 [Amended]**

5. Amend § 2554.1 by removing “\$11,803” in paragraph (b) and adding, in its place, “\$12,537.”

Dated: January 13, 2022.

**Fernando Laguarda,**

*General Counsel.*

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